

ITEL
CORPORATION
TRANSPORTATION SERVICES GROUP

RECORDATION NO. *8709-12* Filed & Recorded

MAR 13 1978 2 22 AM

INTERSTATE COMMERCE COMMISSION

RECEIVED
MAR 13 2 13 PM '78
CERTIFICATION UNIT

February 28, 1978

Hon. H. G. Homme
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RE: Lease Agreement dated as of June 1, 1976 between SSI Rail Corp., Two Embarcadero Center, San Francisco, California, 94111, and The Apache Railway Company, P. O. Drawer E, Snowflake, Arizona, 85937, filed with the Interstate Commerce Commission on February 23, 1977 at 11:40 a.m. and assigned recordation number 8709, and amended by a First Amendment dated as of February 28, 1977.

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are six copies of a Second Amendment dated as of January 6, 1978 between ITEL Corporation, Rail Division (successor in interest to SSI Rail Corp.), Two Embarcadero Center, San Francisco, California, and The Apache Railway Company.

Also enclosed is our check in the sum of \$10.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

Please file the enclosed and return all other copies of the enclosed counterparts (endorsed with the ICC recordation stamp) to the party delivering this letter on our behalf.

Very truly yours,

Martin B. Goodman
Martin B. Goodman
Vice President-Legal Services

2-072A257

Date MAR 13 1978

Fee \$ *10.00*

ICC Washington, D. C.

MAR 13 1978 -2 20 AM

INLANDER STATE COMMERCE COMMISSION

Second Amendment dated as of January 6, 1978, between Ite1 Corporation, Rail Division, successor in interest to SSI Rail Corp. ("SSI"), and The Apache Railway Company, an Arizona corporation ("Lessee").

WITNESSETH:

WHEREAS, SSI and Lessee are parties to a lease dated as of June 1, 1976 as amended by a First Amendment dated as of February 18, 1977 ("the Agreement") pursuant to which SSI has delivered 250 boxcars ("the Boxcars"):

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Lease as follows:

1. All terms defined in the Agreement shall have the defined meanings when used in this Second Amendment.
2. This Second Amendment shall be effective as of January 1, 1978, and paragraph 3 hereof shall apply only to Payments earned subsequent to December 31, 1977.
3. Subsections 6A(i), 6A(ii) and 6A(iii) to the Agreement are hereby deleted in their entirety and the following is substituted in lieu thereof:

"(i) SSI shall receive all payments paid to Lessee by other railroad companies for their use or handling of the Boxcars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") if such Payments for all of the Boxcars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 90 per cent of the Base Payment. For the purposes of the Agreement, Base Payment (including Mileage Revenue as defined below) shall be defined as an amount equal to the Payments which would have been paid to Lessee by other railroad companies if the utilization (as defined below) had been 100 per cent. For the purposes hereof, Mileage Revenue shall be an amount equal to the current applicable charge per line-haul mile specified in the Code of Car Hire Rules and Interpretations - Freight, multiplied by 75 multiplied by the number of days in the applicable calendar year, multiplied by the number of Boxcars then subject to the Agreement. Utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Boxcars, commencing

from the initial loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars are on lease to Lessee, commencing from the initial loading. In addition, SSI will receive, as additional rental, all monies earned by the Boxcars prior to their initial loading.

(ii) In the event Payments exceed 90 per cent of Base Payment in any calendar year, SSI shall receive an amount equal to 90 per cent of the Base Payment plus an amount equal to one-half of the Payments earned in excess of 90 per cent of the Base Payment.

(iii) The rental charges payable to SSI by Lessee shall be paid only from the Payments actually received by Lessee in the following order until SSI receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other."

→ 4. With respect only to the Boxcars having identifying numbers APA 1800 to APA 1849, both inclusive, Section 7C(v) is hereby deleted.

5. Except as expressly modified by this Amendment, all the terms and provisions of the Lease shall remain in full force and effect.

6. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be duly executed as of the date first above written.

ITEL CORPORATION,
RAIL DIVISION

By: 

President
Title

Date: February 21, 1978

THE APACHE RAILWAY COMPANY

By: 

Vice President
Title

Date: February 13, 1978

STATE OF ARIZONA)
) SS:
COUNTY OF MARICOPA)

On this 13th day of February, 1978, before me personally appeared B. W. Redfield, to me personally known, who, being by me duly sworn, says that he is Vice President of The Apache Railway Company, that one of the seals affixed to the foregoing Second Amendment was signed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jane L. Leland
Notary Public

[Notarial Seal]

My Commission expires:

October 21, 1977

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF)
SAN FRANCISCO

On this 21st day of February, 1978, before me personally appeared Joseph M. Costello, Jr., to me personally known, who, being by me duly sworn, says that he is President of ITEL Corporation, Rail Division, that the foregoing Second Amendment was signed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Terry L. Russell
Notary Public

[Notarial Seal]

My Commission expires:

